

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

**In re: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE LITIGATION**

)
) **MDL No. 1456**
) **Master File No. 01-CV-12257-PBS**
) **Subcategory Case No. 06-11337**
) **Hon. Patti B. Saris**

THIS DOCUMENT RELATES TO:

U.S. ex rel. Ven-A-Care of the Florida Keys, Inc. v. Dey,
Inc., et al., No. 05-CV-11084-PBS

)
) **Magistrate Judge**
) **Marianne B. Bowler**
)
)

RESPONSE TO OCTOBER 20, 2009 REQUEST OF THE COURT

Pursuant to this Court's request during the October 20, 2009 oral argument on summary judgment, Defendants Dey, Inc., Dey, L.P., and Dey L.P., Inc. (collectively, "Dey") hereby submit the following documents relating to dispensing fees for inhalation drugs.

Attached hereto as Exhibit A is a copy of an August, 2004 Muse & Associates study entitled, "The Costs of Delivering Inhalation Drug Services to Medicare Beneficiaries," previously submitted as Exhibit 215 to Defendants' Combined Statement of Additional Material Facts, Dkt. 6447.

Attached hereto as Exhibit B is a copy of an October, 2004 report from the United States Government Accountability Office entitled, "Appropriate Dispensing Fee Needed for Suppliers of Inhalation Therapy Drugs."

Attached hereto as Exhibit C is a copy of the Prepared Witness Testimony of Thomas Connaughton to the Committee on Energy and Commerce, dated September 21, 2001, entitled "Medicare Drug Reimbursements: A Broken System for Patients and Taxpayers," previously marked at depositions as Abbott Vito 473, which references a Lewin Group report,

“Impact of Proposed AWP Reductions on the Provision of Home Drug Therapies to Medicare and Medicaid Patients,” dated September 8, 2000.

Attached hereto as Exhibit D is a copy of an October 3, 2000 letter and attachments from Asela Cuervo of the American Association for Homecare to Dr. Adrian Oleck, DMERC Regional B, previously marked at depositions as Abbott Exhibit 446, which includes the Lewin Group Report referenced in Exhibit C.

Dated: October 30, 2009

/s/ Sarah L. Reid
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*Counsel for Defendants Dey, Inc.,
Dey L.P., Inc. and Dey, L.P.*

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was delivered to all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending on October 30, 2009, a copy to LexisNexis File & Serve for posting and notification to all parties.

_____/s Sarah L. Reid